

November 26, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION

SUBJECT: Department of Development and Environmental Services File No. **L07TY401**
Proposed Ordinance No. **2007-0462**

TAKISAKI REZONE
Rezone Application

Location: 13220 Northeast 126th Place, Totem Lake Area

Applicant: Mark Takisaki
represented by **Britt Hiatt**
Hiatt Land Use Consulting
13803 Chain Lake Road
Monroe, Washington 98272

King County: Department of Development and Environmental Services (DDES)
represented by **Mark Mitchell**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Recommendation:

Approve subject to condition
Approve subject to revised condition
Approve without condition

EXAMINER PROCEEDINGS:

Hearing opened:	October 9, 2007
Hearing continued administratively:	October 9, 2007
Hearing record closed:	October 22, 2007
Hearing record reopened:	November 7, 2007
Hearing record closed:	November 19, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Rezone of 5.96 acres from Industrial (I; potential R-12) to Residential, 12 dwelling units/acre (R-12)

Location: 13220 Northeast 126th Place, Totem Lake area Kirkland

Proponent: Mark Takisaki
1312 South Weller Street
Seattle, WA 98144

File Number: Rezone - L07TY401

Threshold Determination: Determination of Nonsignificance (DNS)

Date of Issuance: September 6, 2007

King County Action: Zone Reclassification

Requested Zone: R-12

Existing Zone: I, Industrial (potential R-12)

Community Plan: Northshore

Section/Township/Range: NW 27-26-5 Parcel No.: 2726059018

2. Except as modified herein, the facts set forth in the DDES report to the Examiner and the DDES testimony are found to be correct and are incorporated herein by this reference.
3. The subject property lies east of 132nd Avenue Northeast in the unincorporated area east of Kirkland between Redmond and Woodinville. It is a 5.96-acre, roughly rectangular parcel (with a notch cut out of the northwest corner and a rounded south boundary on the Northeast 126th Place road frontage). The site terrain consists of a sort of side-tilted saddle, with a moderate to steep general slope downward to the south to the Northeast 126th Place frontage, broken up by some benching and the saddling rise in the east central portion of the site. The majorities of the eastern and western portions of the property are encumbered by critical areas (wetlands and a stream) and their regulatory buffer areas. Site vegetation includes dense woodlands in the southwest and northeast portions and grassy and brushy areas elsewhere. Surrounding land development consists of a mix of commercial, industrial and office uses to the south across Northeast 126th Place and detached suburban-scale single-family residences up-slope to the north. The properties immediately to the west and east are vacant.
4. The zoning of the property is Industrial, Potential Residential-12 (I, Potential R-12). The residentially developed properties to the north are zoned Residential-6 (R-6) and Residential-8 (R-8), while the properties on the other three sides of the subject parcel are industrially zoned.
5. The Applicant requests rezoning of the property to R-12. No site development plan is submitted to accompany the rezone application.

6. By Ordinance 15028, enacted October 6, 2004 by the Metropolitan King County Council, amendments were made to the 2000 King County Comprehensive Plan (Plan), including map amendments changing the land use designation of the property from Industrial to Urban Residential Medium Density, 4-12 homes per acre, with a counterpart zoning amendment partially implementing the change in designation, rezoning the property from Industrial (I) to I, potential R-12-SO.¹
7. The Plan contains the following pertinent urban land use policy:
 - Page 2-9 *Policy U-122 King County shall not approve proposed zoning changes to increase density within the Urban Area unless: a. The development will be compatible with the character and scale of the surrounding neighborhood; b. Urban public facilities and services are adequate, consistent with adopted levels of service and meet GMA concurrency requirements, including King County transportation concurrency standards; c. The proposed density change will not increase unmitigated adverse impacts on environmentally sensitive areas, either on site or in the vicinity of the proposed development; d. The proposed density increase will be consistent with or contribute to achieving the goals and policies of the comprehensive plan, and sub area plan, if applicable; and e. The proposal is consistent with the adopted city comprehensive plan of the Potential Annexation Area where the rezone is located if the proposed density exceeds eight dwelling units per acre...*
8. The properties to the east and west of the site are provided substantial physical buffering by the aforementioned critical areas and associated regulatory buffers. The interface with the developed residential area to the north will be provided a more compatible use transition by the proposed R-12 zoning than would be presented by general industrial uses. The 2004 map amendment noted in its text that “the topography of this undeveloped parcel is oriented toward the adjacent residential properties to the north rather than the adjacent industrial properties,” and the rezone text noted that it would “allow the property owner to apply for a rezone to R-12, and eventually develop the property as a residential property consistent with the pattern of development north of the property....”
9. The property lies within the City of Kirkland’s Potential Annexation Area, but is not within the bounds of the City’s Comprehensive Plan Land Use Designation Map and is therefore not designated by the City Plan. The City was kept closely informed of the County’s recent plan amendment and rezoning of the property, during which the City expressed conditional support for the redesignation, concluding that reclassification of the property “for moderate density multi-family residential would be appropriate.” The City “recommend[ed] that special consideration be given to developing it in a manner that is compatible with the adjacent single-family homes and which minimizes conflicts between the new dwellings and the property with adjacent industrial uses.” More recently, in conference with DDES the City has continued to express a lack of concern or issues with the proposed rezone to R-12. The City has not filed any written comment or made any direct appearance in the Hearing Examiner proceedings on the instant rezone proposal.
10. Urban utilities and services are available to serve development allowed under the proposed R-12 zone.

¹ The amendment and rezone were processed through a Hearing Examiner recommendation under file L03LUA02.

11. Nothing in the record suggests that a surplus of available industrial land in the area, observed in the L03LUA02 Hearing Examiner recommendation of the above-noted plan amendment and rezoning, has abated and that the current zoning should be retained to maintain a suitable industrial land base.
12. DDES recommends that if the rezone is approved, a reversion clause be attached as a condition which would render the rezone to R-12 null and void if site plan approval and building permits are not obtained for development on the property within five years (revised upward from the three year recommendation in the Department report, by DDES testimony in hearing). The Applicant opposes such a reversion clause, contending that it will potentially jeopardize ultimate permit obtainment, since it may take awhile for permits to be sought.

CONCLUSIONS:

1. Criteria for the review of rezone applications are established in KCC 20.24.190. Rezone proposals are also addressed by Washington case law:

The following general rules apply to rezone applications: (1) there is no presumption of validity favoring the action of rezoning; (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have changed since the original zoning; and (3) the rezone must bear a substantial relationship to the public health, safety, morals, or welfare.

[*Citizens v. Mount Vernon (Mount Vernon)*, 133 Wn.2d 861, 874-75, 947 P.2d 1208 (1997), citing *Parkridge v. Seattle*, 89 Wn.2d 454, 462, 573 P.2d 359 (1978)] The courts have also held that a rezone which serves to implement the adopted comprehensive plan need not meet the “changed circumstances” portion of the *Parkridge* test. [*SORE v. Snohomish County*, 99 Wn.2d 363, 370-371, 662 P.2d 816 (1983); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846, 899 P.2d 1290 (1995)]

2. Rezoning of the property from I (potential R-12) to R-12 would be sufficiently compatible with the surrounding vicinity to conform to the compatibility test in Plan Policy U-122. The requested rezone would also meet the criteria requiring urban facilities and services, non-increase of unmitigated adverse impacts on environmentally sensitive areas (which issue will be reviewed in depth upon a specific development plan and permit application being filed with the County, or with the City of Kirkland if annexation occurs); and comprehensive plan consistency, both with respect to the County and the City. In summary, the requested rezone conforms with Policy U-122.
3. Rezoning of the property to R-12 conforms to the property’s Comprehensive Plan land use designation, and conforms specifically to the above-noted designation amendment and rezoning narratives.
4. Rezoning of the property to R-12 conforms overall to the Comprehensive Plan.
5. The requested rezone to R-12 also conforms to the county code rezone standards established in KCC 20.24.190(D), which in this case essentially requires a showing of changed circumstances and the rezone being in the public interest.

- A. The sequence of comprehensive plan and zoning actions in the recent past reflects the property's transitional nature in the array of land uses in the area, both from a standpoint of the natural development market and that of the land use regulatory scheme. The legislative motivation to allow some flexibility in the land use regulatory approach reflects a changed circumstance supporting the rezone.
 - B. The requested reclassification is in the public interest as it will allow reasonable development which will be sufficiently compatible with surrounding uses; on the north-south axis with respect to the adjacent residential uses upslope to the north, it will provide a typically classic gradation of development intensity. Also, as noted above there is no showing that there is unmet industrial land demand and no lack of inventory in the area, so loss of the property from the industrial land base will not be contrary to the public interest.
 - C. The proposal conforms to KCC 20.24.190 (D)(1), (2) and (5). (KCC 20.24.190 (D)(3) and (4) apply only to upzonings and are inapplicable to the subject rezone proposal.) In summary, the requested rezone conforms to applicable county code provisions governing rezones.
- 6. The requested R-12 zone conforms to the county code rezone criteria established in KCC 20.24.190.
 - 7. In general, conformity of a rezone to the applicable comprehensive plan and code provisions is tantamount to its "bear[ing] with a substantial relationship to the public welfare," since the comprehensive plan and implementing regulations are the most direct expression of public policy in the topical area of land use. There is no evidence or argument in the record which suggests that the requested rezone is not in support of the public necessity, convenience and general welfare.
 - 8. The requested rezone meets the applicable approval tests and should be recommended to be approved.
 - 9. No compelling justification is shown in this case for a reversion clause attached as a condition to the proposed rezone. If a future developer desires the alternative of industrial zoning, a rezone could be requested to return the property to industrial zoning. The reversion clause recommended by DDES would in this case be arbitrary and potentially preemptive and an unreasonable constraint on the predictability of the property's development. That constraint would potentially have a negative effect on the financial feasibility of development and add an unnecessary risk. There is no demonstrated public benefit shown that would accrue by virtue of the recommended reversion clause, and the Examiner recommends that it not be imposed.

RECOMMENDATION:

APPROVE the rezoning of the subject property from Industrial (I; potential R-12) to R-12.

RECOMMENDED November 26, 2007.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED November 26, 2007, to the following parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) **on or before December 10, 2007**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before December 17, 2007**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE OCTOBER 9, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L07TY401.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Mark Mitchell, representing the Department, and Britt Hiatt, representing the Applicant.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Petitioner's application received April 16, 2007
- Exhibit No. 2 Petitioner's rezone application received April 16, 2007
- Exhibit No. 3 Applicant
- Exhibit No. 4 Certification of Applicant Status received April 16, 2007
- Exhibit No. 5 King County Certificate of Water Availability received April 16, 2007
- Exhibit No. 6 King County Certificate of Sewer Availability received April 16, 2007
- Exhibit No. 7 Fire District Receipt received April 16, 2007
- Exhibit No. 8 SEPA Checklist received April 16, 2007
- Exhibit No. 9 Hearing Examiner's Report and Recommendation regarding L03LUA02 dated January 12, 2004
- Exhibit No. 10 Assessors map NW 27-26-05
- Exhibit No. 11 Affidavit of posting
- Exhibit No. 12 Notice of complete application
- Exhibit No. 13 Affidavit of publication
- Exhibit No. 14 Notice of application
- Exhibit No. 15 Notice of SEPA Determination, issued September 6, 2007
- Exhibit No. 16 Geotechnical Engineering Evaluation prepared by Nelson Geotechnical Associates, Inc. dated March 27, 2007
- Exhibit No. 17 Site plans (existing conditions) received April 16, 2007
- Exhibit No. 18 Staff report for the October 9, 2007 public hearing with attachments
- Exhibit No. 19 Aerial photograph of the rezone general area
- Exhibit No. 20 Notice of Hearing from the Hearing Examiner's Office
- Exhibit No. 21 City of Kirkland Comprehensive Land Use Map
- Exhibit No. 22 Printout of multi-family projects approved from DDES web site
- Exhibit No. 23 E-mail along with 6 maps from Mark Mitchell dated October 17, 2007
- Exhibit No. 24 Memorandum from Mark Mitchell dated November 9, 2007 along with the Signature Report for Proposed Ordinance 2004-0114.3, and a copy of the 2004 Amendments to the 2000 King County Comprehensive Plan